

REMARKS

The foregoing amendments and these remarks are in response to the Office Action dated June 24, 2009. An extension of time for filing this response is hereby requested. Authorization is hereby given to charge any fee underpayment or credit any overpayment to Deposit Account No. 50-0951, if necessary.

At the time of the Office Action, claims 1-24 were pending in the application. In the Office Action, the specification and drawings were objected to. Claims 6, 8, 10, 22, and 24 were rejected under 35 U.S.C. §112, second paragraph. Claims 1, 2, 4-11, and 25-24 were rejected under 35 U.S.C. §102(b) and claims 3 and 12-14 were rejected under 35 U.S.C. §103(a). The rejections are discussed in more detail below.

I. Objections to the Specification

The specification was objected to for failing to provide proper antecedent basis for the claimed subject matter. In particular, the teaching of claim 8 was asserted to lack support in the specification. An appropriate amendment is presented herein to include the teaching of original claim 8 into the specification. This amendment finds support in claim 8 as filed. The specification was also objected to on the basis that there was asserted to be no description in the specification of the under layer being a five layer extruded film, as claimed in claim 13. To the contrary, this claim finds support at least at page 3, line 10 and page 5, line 12. Nevertheless, an appropriate amendment is presented herein to page 5 to make it clear that it is the under layer that is referred to. Withdrawal of the objections is thus respectfully requested.

II. Objections to the Drawings

The drawings were objected to under 37 CFR §1.83(a) for failing to show every feature of the invention specified in the claims. In particular, the five layer extruded film under layer as claimed in claim 13 was required to be shown. An appropriate drawing amendment is filed herewith, showing a five layer under layer. Withdrawal of the objection is requested.

III. Rejections under 35 U.S.C. §112

Claims 6, 8, 10, 22, and 24 were rejected under 35 U.S.C. §112, second paragraph for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In regard to claim 6, the claim was rejected for lack of antecedent basis for "inner layer" because claim 1 referred to an "under layer." Claim 8 was rejected because the Examiner alleged that it was unclear whether the glue is wet upon application thereof, or whether the label is wet. Claim 10 was rejected for lack of antecedent basis for plastics material, and claim 11 was rejected because the term "biaxial polypropylene plastic" was alleged to be unclear. Claim 24 was rejected for lack of antecedent basis for "outer layer."

Appropriate amendments are made to the claims herein to overcome these rejections, withdrawal of which is respectfully requested.

IV. Rejections to the claims based on cited art

Claims 1, 2, 4-11 and 15-24 were rejected under 35 U.S.C. §102(b) as being anticipated by WO 91/16025 to Samonides (hereafter "*Samonides*"). Claims 3 and 12-14 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Samonides*.

The Office Action asserts that *Samonides* discloses a transparent face sheet (under layer) that is extruded onto the carrier sheet, and that the face sheet may be transparent so that the label indicia which has been printed on the adhesive layer at the interface with the face sheet is visible through the adhesive and through the underside of the label. The Examiner alleges that this is desirable where the label is applied to a clear bottle.

Applicant respectfully traverses this rejection. *Samonides* is concerned with protecting the printed surface of a label with a transparent protective face sheet, and discloses two embodiments of label. The first embodiment, shown in Figs. 1-6 involves a lower carrier sheet 6 on which is coated a release coating 8. An adhesive layer 22 is extruded on top of the release coating 8. Printing 28 is applied onto the adhesive layer 22, and a transparent face sheet 40 is extruded onto the printing indicia 28. In use, the

carrier sheet 6 is peeled off the adhesive layer 22, which is applied to a surface. The printing 28 is visible from the top, through the transparent face sheet 40. In the second embodiment, shown in Figs. 7-12, a film 64 has printing 78 applied thereto, and a transparent adhesive layer 90 is extruded onto the top surface of the film 64 carrying the printing 78. A carrier sheet 96 having a release coating 98 is laminated onto the adhesive layer 90. In use, the carrier sheet 96 is removed, and the label applied to a surface such as a clear glass bottle. The printing 78 is visible through the adhesive, through the underside of the label.

In both embodiments of label disclosed in *Samonides*, therefore, the printing 28, 78 is sandwiched and protected between a sheet (the face sheet 40 or the film 64) and an adhesive layer 22, 90. Either the sheet or the adhesive layer is transparent, and the other may be opaque so that the protected printed indicia is visible through the transparent layer. *Samonides* teaches that the protection of the printing indicia is important to preserve the finished appearance of the label. Furthermore, *Samonides* makes no reference to any change in the opacity of any of the labels upon exposure to moisture, which is required in the present claims.

In contrast, the currently amended claims define that the outer layer receives printed indicia thereon, and it has an opacity that reduces after exposure to moisture, and that an inner layer of the label has an opacity that is not affected by exposure to moisture. This is entirely different from the teaching of *Samonides* which is that the printed indicia must be protected by being sandwiched between two layers, and viewed through one of the layers which is transparent. The printed indicia on the labels defined in the present claims is not protected, but is still readable even when the outer layer has been exposed to moisture, due to the opacity of the inner layer remaining unaffected by the moisture. The labels of the present claims retain the look and feel of a traditional paper label, but have readability advantages over the traditional labels. This is clearly not taught or suggested by *Samonides*, and the present claims are thus believed to define patentable subject matter.

For the foregoing reasons, the claims are believed to be in condition for allowance. Withdrawal of the rejections based upon art is thus respectfully requested.

V. Conclusion

Applicant has made every effort to present claims which distinguish over the prior art, and it is thus believed that all claims are in condition for allowance. Nevertheless, Applicant invites the Examiner to call the undersigned if it is believed that a telephonic interview would expedite the prosecution of the application to an allowance. In view of the foregoing remarks, Applicant respectfully requests reconsideration and prompt allowance of the pending claims.

Date: 11/24/09

Respectfully submitted



Mark D. Passler
Registration No. 40,764
Sarah E. Smith
Registration No. 50,488
AKERMAN SENTERFITT
Post Office Box 3188
West Palm Beach, FL 33402-3188
Tel: 561-653-5000